

amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purpose of this section, any assessment determined at a date later than prescribed by this subpart because of the failure of a processor to submit a report to the Board when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. The receipt of a payment by the Board will be based on the earlier of the postmark date or the actual date of receipt.

(b) Penalties. The Secretary may assess any person who violates any provision of this subpart a civil penalty of not less than nor more than the minimum and maximum amounts specified in § 3.91(b)(1)(xxxv) of this title for each such violation. In the case of a willful failure to pay an assessment as required by this subpart, in addition to the amount due, the Secretary may assess an additional penalty of not less than nor more than the minimum and maximum amounts specified in § 3.91(b)(1)(xxxv) of this title for each such violation. The amount of any such penalty shall accrue to the United States, which may recover such amount in a civil suit. The remedies provided in this section are in addition to, and not exclusive of, other remedies that may be available by law or in equity.

[58 FR 62503, Nov. 29, 1993, as amended at 70 FR 29579, May 24, 2005]

#### **§ 1160.215 Assessment exemption.**

(a) No assessment shall be required on fluid milk products exported from the United States.

(b) A fluid milk processor described in § 1160.211(a) who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; processes only products that are eligible to be labeled as 100 percent organic under the NOP; and is not a split operation shall be exempt from the payment of assessments.

(c) To apply for an assessment exemption, a fluid milk processor described in § 1160.211(a) shall submit a request for exemption to the Board on a form provided by the Board at any

time initially and annually thereafter on or before July 1 as long as the fluid milk processor continues to be eligible for the assessment exemption.

(d) The request shall include the following: The fluid milk processor's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified in paragraph (b) of this section for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(e) The Board will grant an assessment exemption to any fluid milk processor meeting the criteria in § 1160.215(b) and issue a Certificate of Exemption to the fluid milk processor. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(f) The exemption will apply not later than the last day of the month following the Certificate of Exemption issuance date.

[70 FR 2754, Jan. 14, 2005]

#### **PROMOTION, CONSUMER EDUCATION AND RESEARCH**

#### **§ 1160.301 Promotion, consumer education and research.**

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any plans or projects authorized in §§ 1160.208 and 1160.209. Such plans or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of consumer education, promotion and research activities with respect to fluid milk products; and

(2) The evaluation of consumer education, promotion and research activities implemented under the direction of the Board, and the communication

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of such evaluation to fluid milk processors and the public.

(b) The Board shall periodically review or evaluate each plan or project authorized under § 1160.301(a) to ensure that it contributes to an effective program of promotion, consumer education and research. If the Board finds that any such plan or project does not further the purposes of the Act, the Board shall terminate that plan or project.

(c) No plan or project authorized under § 1160.301(a) may employ unfair or deceptive acts or practices with respect to the quality, value or use of any competing product.

(d) No plan or project authorized under § 1160.301(a) may make use of a brand or trade name of a fluid milk product, except that this paragraph does not preclude the Board from offering program material to commercial parties to use under such terms and conditions as the Board may prescribe, subject to approval by the Secretary.

### REPORTS, BOOKS AND RECORDS

#### § 1160.401 Reports.

Each fluid milk processor marketing milk and paying an assessment under § 1160.211 shall be required to report upon the remittance of such assessments such information as the Board or the Secretary may require. Such information shall include but not be limited to the following:

(a) The quantity of fluid milk products marketed that is subject to the collection of the assessment;

(b) The amount of assessment remitted;

(c) The reason, if necessary, why the remittance is less than the number of hundredweights of milk multiplied by 20 cents; and

(d) The date any assessment was paid.

#### § 1160.402 Books and records.

Each person subject to this subpart shall maintain and make available for inspection by agents of the Board and the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued hereunder, including such records as are necessary to verify any

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reports required. Such books and records shall be retained for at least two years beyond the fiscal period of their applicability.

#### § 1160.403 Confidential treatment.

(a) All persons, including agents and former agents of the Board, all officers and employees and all former officers and employees of the Department, and all officers and all employees and all former officers and employees of contracting agencies having access to commercial or financial information obtained from such books, records or reports under the Act and this subpart shall keep such information confidential, and not make it available to Board members. Only those persons, as determined by the Secretary, who have a specific need for such information in order to effectively administer the provisions of this subpart shall have access to such information. In addition, they shall disclose only that information the Secretary deems relevant, and then only in a suit or administrative hearing brought at the discretion, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section, however, shall be deemed to prohibit:

(1) The issuance of general statements based upon the reports of the number of processors, individuals, groups of individuals, partnerships, corporations, associations, cooperatives, or other entities subject to this subpart or statistical data collected from such sources, which statements do not identify the information furnished by any such parties, and

(2) The publication, at the direction of the Secretary, of the name of any processor, individuals, group of individuals, partnership, corporation, association, cooperative, or other entity that has been adjudged to have violated this subpart, together with a statement of the particular provisions of the subpart so violated.

(b) Except as otherwise provided in this subpart, information obtained under this subpart may be made available to another agency of the Federal Government for a civil or criminal law enforcement activity if the activity is